

Florida Impact Fee Review Task Force

% Legislative Committee on Intergovernmental Relations
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MEMORANDUM

TO: Members of the Florida Impact Fee Review Task Force

FROM: Cristina Martinez, Attorney
Legislative Committee on Intergovernmental Relations

RE: Florida's Government in the Sunshine Law

DATE: August 23, 2005

Florida's Government in the Sunshine Law, (§ 286.011, F.S., attached), provides the public its right of access to governmental proceedings at both the state and local level. The law, commonly referred to as the Sunshine Law, requires that:

- (1) meetings of public boards or commissions be open to the public;
- (2) reasonable notice of such meetings be given; and
- (3) minutes of the meetings be taken.

§286.011, Fla. Stat.

Advisory boards and commissions, whose powers are limited to making recommendations to a public agency and which possess no authority to bind that agency in any way, such as the Florida Impact Fee Review Task Force, are also subject to the Sunshine Law. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988). *See also*, § 20.052(5)(c), Fla. Stat.(meetings of executive agency advisory bodies are subject to the Sunshine Law).

The Sunshine Law extends to discussions, deliberations, and any formal action taken by this Task Force. There is no requirement that a quorum be present for a task force to be subject to the provisions of § 286.011, Fla. Stat. The law applies to **any gathering**, formal or casual, of two or more members of this Task Force to discuss some matter on which **foreseeable action** will be taken by the Task Force. *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). Task Force members, however, are NOT prohibited under the Sunshine Law from meeting socially, provided that matters which may come before the Task Force are not discussed at such gatherings.

Certain situations have arisen where the Sunshine Law has been held to apply where only one member of a commission or public board was present. For example:

- **Written Reports.** The use of a written report by one Task Force member to inform another Task Force member of a subject which will be discussed at a public meeting is not a violation of the Sunshine Law if prior to the meeting there is no interaction related to the report among the Task Force members. If, however, the report is circulated among Task Force members for comments with such comments being provided to other Task Force members, there is interaction among the Task Force members which is subject to §286.011, Fla. Stat. Op. Att’y Gen. Fla. 90-3 (1990); *see also* Op. Att’y Gen. Fla. 96-35 (1996) (school board member may prepare and circulate an informational memorandum or position paper to other board members; however, the use of a memorandum to solicit comments from other board members violates the Sunshine Law).
- **Telephone conversations.** Task Force members should not discuss Task Force business by telephone or conduct a meeting of the Task Force by telephone, unless the meeting has been properly noticed and the public can access the call.

Related is whether this Task Force may conduct a meeting through the use of a telephone conference call or other type of communications technology. In Op. Att’y Gen. Fla. 98-28 (1998), the Attorney General concluded that § 120.54(5)(b)2, Fla. Stat. authorizes state agencies to conduct meetings via electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing access for the public. *See* Rule 28-109, Florida Administrative Code.

- **Computers and e-mail.** While there is no provision generally prohibiting computer use to carry out public business, their use by Task Force members to communicate among themselves on issues pending before the Task Force is subject to the Sunshine Law. Op. Att’y Gen. Fla. 89-39 (1989); *see also* Op. Att’y Gen. Fla. 96-34 (1996) (“e-mail” is a public record).
- **Delegation of authority to a single individual.** If a Task Force member is delegated the authority to review and reject certain options from further consideration by the entire Task Force, the Task Force member is performing a decision-making function that must be conducted pursuant to the provisions of the Sunshine Law. Op. Att’y Gen. Fla. 90-17(1990).
- **Use of nonmember liaisons.** The Sunshine Law is also applicable to a meeting between a Task Force member and an individual who is not a Task Force member when that individual is being used as a liaison between, or to conduct a de facto meeting of, Task Force members. *See Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979) (series of scheduled successive meetings between the school board superintendent and individual members of the school board were subject to the Sunshine Law because the meetings were held in rapid-fire succession in order to avoid a public airing of a controversial redistricting problem).

- **Staff Meetings.** Staff meetings are not ordinarily subject to the Sunshine Law. *Occidental Chemical Company Co. v. Mayo*, 351 So. 2d 336 (Fla. 1977), *disapproved in part on other grounds*; *Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992). *See also*, *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 101 (Fla. 1st DCA 1996) (staff personnel not subject to Sunshine Law); and *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976) (staff responsible for informing the decision maker through fact-finding consultations not subject to Sunshine Law). Nonetheless, when a staff member ceases to function in a staff capacity and is appointed to a subcommittee which is delegated authority to make recommendations to the Task Force, the staff person member loses their identity as staff while working on the subcommittee and the Sunshine Law applies to the subcommittee and the staff person. *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983). Therefore, it is the nature of the act performed, not the title of the person, which determines whether or not staff is subject to the Sunshine Law. *Id.*

Failure to comply with the Sunshine Law by *knowingly* attending a meeting not held in accordance with the law's provisions can result in a second degree misdemeanor charge under § 286.011(3)(b), Fla. Stat., punishable by up to 60 days imprisonment and/or a \$500 fine. *See* §§ 775.082(4)(b), 775.083(1)(e), F.S. Furthermore, the individual may be suspended from office pending resolution of the charge. If found guilty, the individual will be removed from office by executive order of the Governor. Additionally, reasonable attorney's fees will be assessed against the public body found to have violated the Sunshine Law and may be assessed against the individual member. Moreover, any action taken at the meeting held in violation of the law may be held invalid.

If you have any questions regarding the applicability of the Sunshine Law, please do not hesitate to contact me at (850)488-9627.